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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA

9
10 CHRISTOPHER W. BOSH,

11 Plaintiff,

12 vs.

13 ALLISON MATHIS, an individual; et
al.

14
15 Defendants

) Case No.: CV11 03782

)
) DEFENDANT ALLISON MATHIS'
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) MOTION TO DISMISS FOR LACK
) OF PERSONAL JURISDICTION
) UNDER FED. R. CIV. P. 12(b)(2)

) Hearing Date: July 25, 2011

) Time: 9:30 a.m.

) Court: The Honorable Dolly M. Gee

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22 **I. INTRODUCTION**

23 Defendant Allison Mathis ("Mathis"), a resident of the State of Florida,
24 moves to dismiss this action for lack of personal jurisdiction because she has had
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1 insufficient contacts with the State of California to provide this court with
2 jurisdiction over her person. Nor can plaintiff, NBA star Christopher Bosh,
3 establish that assertion of jurisdiction over Mathis would not “offend traditional
4 notions of fair play and substantial justice.” *International Shoe Co. v. Washington*,
5 326 U.S. 310, 316 (1945). For these, and other reasons set forth in greater detail
6 below, this Court should dismiss this action for lack of personal jurisdiction.

7 Bosh cannot establish personal jurisdiction over Mathis because she has had
8 virtually no contacts with the State of California whatsoever. Mathis is not
9 domiciled in California, does not reside here, does not own or lease property here,
10 does not do business here, does not maintain offices here, does not maintain bank
11 accounts here, and otherwise has no contact with the State of California.¹

12 Consequently, Mathis has not availed herself of this forum and haling her
13 into this Court, located completely across the geographic map of the United States
14 from where she lives, would offend constitutional principles of due process.

15 Alternatively, this court should dismiss this case under the doctrine of *forum*
16 *non conveniens* as both parties to the lawsuit – Bosh and Mathis – are Florida
17 residents, and requiring Mathis to litigate in California would create a substantial
18 hardship.

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20 Accordingly, the Court should dismiss this action.

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22 ¹ Mathis’ only arguable contact with this forum is that she entered into an
23 agreement *in Florida to work in Florida* with a company, Shed Media, that has
24 offices in California. Bosh is not a party to this contract, is not in privity of
25 contract with Mathis (or Shed), and is himself a resident of Florida and/or Texas.
Shed was originally a party to this action, but has since been dismissed, leaving
only two parties: Bosh and Mathis – both residents of another state.

II. FACTUAL BACKGROUND

Plaintiff Chris Bosh is a very wealthy professional basketball player, earning more than \$14 million per year, who plays for the NBA franchise Miami Heat. (Declaration of Allison Mathis ("Mathis Decl.")). Allison Mathis is the mother of Bosh's only child, and the two are currently engaged in child support and custody proceedings in the States of Texas, Maryland and Florida. (Mathis Decl.)

Bosh and Mathis previously lived together in the State of Texas, where he bought a home in the names of "Chris and Allison Bosh, husband and wife." Bosh subsequently abandoned Mathis in that state when she was seven months pregnant, and left her alone, without money or transportation and no way to provide for herself. (Mathis Decl.)

Mathis left the State of Texas to live with her mother in Maryland, and subsequently relocated to Florida, where she now lives. To provide for herself pending resolution of the various support and custody matters that are ongoing, Mathis decided to take a job with former Defendant Shed Media. (Mathis Decl.) Shed Media is the producer of a TV reality series entitled *Basketball Wives*, and just prior to the filing of this lawsuit by Plaintiff Bosh, Mathis was hired by Shed to appear as a participant on the program. (Complaint; Mathis Decl.).

Mathis entered into an agreement with Shed Media in the State of Florida. She was advised that filming of series episodes in which she would participate would take place in Florida. The 2 or 3 episodes she appeared in were filmed in the State of Florida. (Mathis Decl.) Fearing that Mathis might publicly disclose the facts of their estrangement and of his treatment of her during her pregnancy, which would cause him considerable embarrassment and possible loss of some of

1 his fan base, Plaintiff Bosh sought to silence her and keep from appearing on the
2 program by suing her and Defendant Shed. (Complaint).

3 After this suit was filed, Shed stopped filming of Mathis, although filming of
4 the series episodes continued without her. Since this suit was filed, Bosh settled
5 with Defendant Shed Media. (Mathis Decl.) As a direct result of the actions of
6 Plaintiff Bosh, Mathis is currently unemployed and without foreseeable means of
7 supporting herself and her minor child. (Mathis Decl.)

8 Mathis is not domiciled in California, does not reside here, does not own or
9 lease property here, does not do business here, does not maintain offices here, does
10 not maintain bank accounts here. (Mathis Decl.)

11 12 **III. ARGUMENT AND AUTHORITY**

13 **A. Bosh Cannot Meet the Standard For Establishing Jurisdiction.**

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15 When a nonresident defendant files a motion to dismiss for lack of personal
16 jurisdiction, the plaintiff has the burden of proving the existence of personal
17 jurisdiction over the defendant. *Wilson v. Belin*, 20 F.3d 644, 648 (5th Cir. 1994).
18 He must make a prima facie showing of those jurisdictional facts in order to defeat
19 a motion to dismiss. *Davis v. American Family Mut. Ins. Co.*, 861 F.2d 1159, 1161
20 (9th Cir.1988). See also *Data Disc, Inc. v. Sys. Technology Assoc., Inc.*, 557 F.2d
21 1280, 1285 (9th Cir. 1977); *Flynt Distrib. Co., Inc. v. Harvey*, 734 F.2d 1389,
22 1392 (9th Cir. 1984); *Farmers Ins. Exchange v. Portage La Prairie Mut. Ins. Co.*,
23 907 F.2d 911, 912 (9th Cir. 1990).

24 To make that showing Plaintiff has to produce admissible evidence which, if
25 believed, would be sufficient to establish the existence of personal jurisdiction. See

1 *WNS, Inc. v. Farrow*, 884 F.2d 200, 203-04 (5th Cir. 1989). Accordingly, Bosh
2 must prove that Mathis purposefully established certain “minimum contacts” with
3 California and that the assertion of jurisdiction over Mathis in California would not
4 “offend traditional notions of fair play and substantial justice.” *International Shoe*
5 *Co. v. Washington*, 326 U.S. 310, 316 (1945); *Villar v. Crowley Maritime Corp.*,
6 990 F.2d 1489, 1496 (5th Cir. 1993).

7 Bosh, however, has not alleged that Mathis purposefully established any
8 “minimum contacts” with California, nor does he allege that his asking this Court
9 to assert jurisdiction over her far away from her state of residence would not
10 “offend traditional notions of fair play and substantial justice.” *International Shoe*
11 *Co. v. Washington*, 326 U.S. 310, 316.

12 Bosh has failed to make *any* factual allegations that would support jurisdiction
13 over Mathis in California. He concedes that she is a Florida resident, and does not
14 allege that she has ever been to California. (Complaint, ¶ 12) Mathis is not
15 domiciled in California, does not reside here, does not own or lease property here,
16 does not do business here, does not maintain offices here, and does not maintain
17 bank accounts here. (Declaration of Allison Mathis “Mathis Decl.”). As set forth
18 in greater detail below, the fact that Shed Media approached Mathis in Florida, and
19 Shed and Mathis agreed that Mathis would film *Basketball Wives* in Florida, does
20 not confer personal jurisdiction on this court.

1 **B. Mathis' Agreement to Film *Basketball Wives* in Florida Does Not**
 2 **Establish That She Purposefully Availed Herself of the Privileges of**
 3 **Conducting Business in California.**

4 Nothing in Plaintiff's complaint charges Mathis with "purposefully directing"
 5 any activities at California, such that his suit against her in this forum results from
 6 any injuries "arising out of or relating to" anything done here. This failure is fatal
 7 to his claim of jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472
 8 (1985). See also *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408,
 9 414 (1984). Compare *Keeton v. Hustler Magazine, Inc.*, 465 U. S. 770, 774 (1984).

10 The only factual allegations in the Complaint that arguably relate to this forum
 11 are that "SHED MEDIA sought Defendant MATHIS' participation in its show
 12 "Basketball Wives..." (Complaint, ¶ 15). However, the complaint does not, and
 13 cannot establish that Mathis sought out this relationship, or that any performance
 14 under the contract was undertaken in California. The undisputed evidence is that
 15 the agreement was made in Florida and all performance by Mathis was to be done
 16 in Florida. Moreover, Bosh was not a party to the contract between Shed and
 17 Mathis and there is no claim for breach of contract in this case. The fact that Shed
 18 may have a claim that Mathis consented to jurisdiction in California over any
 19 disputes between Shed and Mathis does not mean that Mathis is amenable to suit in
 20 California on a third party claim by Bosh.

21 **C. This Case Should Be Dismissed Because California is a *Forum Non***
 22 ***Conveniens*.**

23 Alternatively, this action should be dismissed on the grounds that California is a
 24 *forum non conveniens*. Both Bosh and Mathis - the only parties remaining in this
 25

1 suit - reside in Florida. Therefore, Florida is an adequate alternative forum, and the
2 balance of public and private interests weighs in favor of having the action heard—
3 if it should be heard at all-- in the courts of that state. Plaintiff is a wealthy
4 professional basketball player who earns in excess of \$10,000,000 per year who is
5 more than capable of suing and sustaining litigation in any jurisdiction within the
6 nation. He is employed by the Miami Heat, an NBA franchise based in Miami,
7 Florida. He maintains a residence in Florida and due to the length of the NBA
8 season, resides in Florida for the vast majority of the year. Therefore, litigating this
9 case in Florida would obviously provide no hardship to him whatsoever.

10 Mathis, on the other hand, is a person of minimal resources, has no present
11 employment as Shed Media terminated her employment after this suit was filed,
12 and would be oppressively burdened by having to litigate in California.
13 Undersigned counsel is representing Mathis *pro bono* for the limited purpose of
14 filing and arguing this Motion to Dismiss, but Mathis does not have the means to
15 retain counsel if this motion is not granted. (Declaration of Conal Doyle).
16 However, Mathis does have a relationship with counsel in Florida and may be able
17 to defend that suit there.²

18 Accordingly, the burden on Mathis litigating this matter in California is
19 substantial while the burden on Bosh litigating in Florida is virtually non-existent,
20 and this court should therefore dismiss the complaint. See *Cheng v. Boeing Co.*,
21 708 F.2d 1406, 1410 (9th Cir.1983). The district courts in Florida are fully capable
22 of hearing and resolving any justiciable issues framed by Plaintiff's complaint. An
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24 ² The cost of hiring competent counsel in Los Angeles is at least 50% more than
25 the cost of hiring similarly experienced counsel in central Florida. (Doyle Decl.)

1 alternative forum for the hearing of this case clearly exists and is more convenient
2 for *both* parties.

3 The private and public interests involved in this matter favor trial in Florida. To
4 the extent Defendant Shed Media is a potential witness, its continuing presence in
5 Florida (filming ongoing episodes of the TV series) makes is amenable to local
6 process. Should it be necessary to view the affected premises (filming location), it
7 exists only in Florida. The parties reside in Florida. All the “practical problems
8 that make trial of a case easy, expeditious and inexpensive” are best worked out by
9 having this matter heard in the State of Florida. *Gulf Oil Corp. v. Gilbert*, 330 U.S.
10 501, 508, 67 S.Ct. 839, 91 L.Ed. 1055 (1947), superseded by statute on other
11 grounds as recognized in *Hartford Fire Ins. Co. v. Westinghouse Elec. Corp.*, 725
12 F.Supp. 317 (S.D.Miss.1989). See also *Rosa, supra*, 211 F.3d at 512; *Nebenzahl v.*
13 *Credit Suisse*, 705 F.2d 1139, 1140 (9th Cir.1983).

14 The most critical public interest factors involved in this matter are 1) the
15 unfairness of burdening citizens in an unrelated forum with jury duty; and (2) the
16 interest in having localized controversies decided at home. *Gulf Oil, supra*, 330
17 U.S. at 508-09, 67 S.Ct. 839; *Rosa, supra*, 211 F.3d at 512. At bottom, this case is
18 a dispute between Florida residents about alleged invasion of privacy and related
19 torts that allegedly occurred on Florida soil. To date, Bosh’s attempts to thwart
20 Mathis’ First Amendment rights to participate in *Basketball Wives* have been
21 successful. Her employment has been terminated, and no footage of her filming
22 has been broadcast. Any connection to California is premised on broadcast of her
23 image from a California studio. This has not happened and apparently will not.
24 Therefore, Florida is the only state that has any interest in deciding this
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1 controversy and California jurors (and judges) should not be burdened by having to
2 resolve this controversy between two non-resident litigants.

3 Requiring Mathis to litigate this matter in California, given her inability to
4 afford legal representation here, would be nearly tantamount to guaranteeing entry
5 of default judgment against her. These "exceptional circumstances" warrant
6 dismissal on *forum non conveniens* grounds. See *Ioannidis/Riga v. M/V Sea*
7 *Concert*, 132 F.Supp.2d 847, 861 (D.Or.2001); *Magellan Real Estate Investment*
8 *Trust v. Losch*, 109 F.Supp.2d 1144, 1148 (D.Ariz. 2000).

9 WHEREFORE, Defendant Allison Mathis respectfully request this Court
10 dismiss this action with prejudice for lack of personal jurisdiction, or in the
11 alternative, dismiss under the doctrine of *forum non conveniens*.

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13 DATED this 20th day of June, 2011.

14 /s/ Conal Doyle
15 By: _____
16 CONAL DOYLE
17 Attorney for Defendant
18 ALLISON MATHIS
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